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# Terms & Conditions

January 2018

BY SIGNING THE ATTACHED SCHEDULE YOU ARE AGREEING TO THE TERMS AND CONDITIONS OF THIS SOFTWARE LICENCE AND SERVICES AGREEMENT. IF YOU DO NOT ACCEPT THE TERMS AND CONDITIONS OF THIS AGREEMENT DO NOT SIGN THE SCHEDULE AND PROMPTLY RETURN ANY SOFTWARE PROVIDED AND ANY ACCOMPANYING ITEMS TO RIGHT QLIK.

## 1. TERM

This Agreement shall start on the date it is signed by both parties and shall continue unless terminated in accordance with clause 11 of this Agreement.

## 2. RIGHT QLIK'S OBLIGATIONS

2.1 Subject to you complying with your obligations under this Agreement, RIGHT QLIK will provide the Services and Software on the following terms and conditions.

2.2 RIGHT QLIK will:

2.2.1 provide the Services with reasonable skill and care; and

2.2.2 in accordance with the PID (if any); and

2.2.3 supply you with a copy of the Software under the terms of this Agreement.

2.3 Installation of the Software including new releases and/or versions is not included in the licence fee. RIGHT QLIK will provide installation services at an additional charge.

2.4 RIGHT QLIK may provide the Services from its own sites or at the Main Location. Hardware and Third Party Products, if any, shall be delivered to the Main Location.

2.5 RIGHT QLIK may use sub-contractors to provide some of the Services but such use shall not relieve RIGHT QLIK of its obligations under this Agreement. Any intended use of sub-contractors on client projects will only be done after written approval from the client as to the use of such resources.

## 3. SOFTWARE LICENCE & SUPPORT

3.1 RIGHT QLIK grants to you upon payment of the licence Fees and subject to the terms and conditions in this Agreement, a non-exclusive, non-transferable, perpetual licence in object code only to use the Software, excluding the Third Party Products. The Software shall include any new releases and/or versions of the Software licensed to you under the Support Services (if provided).

3.2 Without prejudice to the other provisions of this Agreement the licence granted in clause 3.1 is subject to the following conditions:

3.2.1 You may, subject to the Copyright (Computer Program) Regulations 1992, only make so many copies of the Software as are reasonably necessary for operational security and lawful use. Such copies and the media on which they are stored shall be the property of RIGHT QLIK. You shall make full and accurate records of such copying and location of the copies and make these available to RIGHT QLIK on request from time to time.

3.2.2 You shall not modify or remove any copyright or proprietary notices on the Software and shall reproduce such notices on any copies of the Software.

3.2.3 The Software may only be used by you: for your internal business purposes; on a computer system running a compatible operating system; at the Locations; for the authorised number of Users. The Server Licences may only be installed at the Main Location. If you want to change the Main Location RIGHT QLIK's prior consent is needed.

3.2.4 You shall not permit any third party to use, access or possess the Software nor use the Software on behalf of or for the benefit of any third party, including any consulting, service-bureau, time-sharing, rental or services of any other kind, except for a third party which provides outsourced services to you under a written agreement. The outsource provider and its staff will count towards the number of authorised Users you have.

3.2.5 If the Software fails to operate owing to you linking to, accessing or otherwise using the Software or causing the Software to be used in conjunction with, any third party

software, database or other application without the prior written consent of RIGHT QLIK then RIGHT QLIK shall not be liable. You are not allowed to use third party software which is designed to replicate, run or operate in conjunction with the Software without RIGHT QLIK's written consent.

3.2.6 Except to the extent permitted by law, you shall not decompile, reverse engineer, disassemble or otherwise derive the source code of the Software nor permit any third party to do so.

3.2.7 Save as otherwise provided, you shall not, and shall not permit any third party to, copy, make error corrections to or otherwise modify or adapt the Software nor create derivative works based upon the Software or permit any part of the Software to be combined with or become incorporated in any other computer programs.

3.2.8 You shall effect and maintain adequate security measures to safeguard the Software against access to or use by unauthorised persons and ensure that the Software and all copies are kept under your control and shall notify RIGHT QLIK immediately on becoming aware of any unauthorised use of the Software by any person.

3.3 You shall permit RIGHT QLIK or its authorised representatives to inspect and have access to the Main Location to ensure that you are complying with your obligations under this Agreement.

3.4 In respect of Third Party Products separate licence terms will apply as notified to you by the third party licensor. RIGHT QLIK will pass through all licences, terms and warranties to you on payment for the Third Party Products.

3.5 Support Services shall be provided by RIGHT QLIK from Go-Live Date, subject to you paying the annual support Fee, under this Agreement and in accordance with RIGHT QLIK's Support Terms & Conditions. Third Party Product upgrade maintenance service (part of the Support Services) is payable from the Start Date.

3.6 You shall indemnify RIGHT QLIK, keep RIGHT QLIK indemnified and hold RIGHT QLIK harmless from and against all claims, liabilities, proceedings, costs, damages, losses, or expenses incurred by RIGHT QLIK caused by, or in any way connected with your use of the Software or the unauthorised use of the Software by any third party whether through breach of this Agreement or any other negligent or wrongful act.

## 4. HARDWARE

4.1 RIGHT QLIK shall provide the Hardware (if any) to you as listed in the Schedule.

4.2 Hardware shall be supplied by RIGHT QLIK subject to you paying the Hardware Fees under this Agreement and in accordance with RIGHT QLIK's Hardware Terms & Conditions.

## 5. YOUR OBLIGATIONS

5.1 You shall:

5.1.1 use the Services for your own internal business purposes only;

5.1.2 comply with the terms and conditions of this Agreement;

5.1.3 pay RIGHT QLIK the Fees;

5.1.4 be responsible for your connectivity to your network and the Internet including remote support access in line with RIGHT QLIK's policy, as applicable;

5.1.5 be responsible for ensuring your IT system is compatible with the Software and/or Hardware;

5.1.6 be responsible for your use of the Software in your business and the backing-up of your data (if backed-up data is to be

- provided to RIGHT QLIK it should be provided in line with RIGHT QLIK's Remote Support Access Policy);
- 5.1.7 enter into and comply with the Third Party Product licence arrangements including having sufficient licences for the number of Users shown in the Schedule;
- 5.1.8 not employ or otherwise engage any of RIGHT QLIKs project staff or senior employees during the provision of Services or for 12 months after the Services have been completed.

## 6. DATA PROTECTION

- 6.1 You acknowledge that you are Data Controller (as defined in the Act) of the Personal Data (as defined in the Act) and that RIGHT QLIK is a Data Processor (as defined in the Act) for the purposes of the Act.
- 6.2 You will obtain all necessary consents from your customers or other originators of data and/or content as appropriate to comply with your obligations under the Act, including the consent to transfer personal data to RIGHT QLIK and other third parties as appropriate.

## 7. INTELLECTUAL PROPERTY RIGHTS

- 7.1 All IPR in the Software and any other products or Services supplied by RIGHT QLIK from time to time belong to RIGHT QLIK or a third party licensor.
- 7.2 RIGHT QLIK shall defend or, at its option, settle any claim brought against you that your normal use or possession of the Software, excluding Third Party Products, in the UK and in accordance with this Agreement infringes any IPR of any third party and shall pay any damages finally awarded against you in respect of such claim and any reasonable costs and expenses incurred by you provided that:
- 7.2.1 you notify RIGHT QLIK immediately;
- 7.2.2 RIGHT QLIK is given immediate and complete control of such claim, all information and assistance as RIGHT QLIK reasonably requires at RIGHT QLIK's cost, and you do not prejudice the defence of such claim; and
- 7.2.3 the claim does not arise from use of any release other than the most recent or penultimate versions of the Software or from any circumstances set out at clause 8.3 or breach of clause 3.2.
- 7.3 In the event that a claim as contemplated by clause 7.2 is made or in RIGHT QLIK's opinion is likely to be made, RIGHT QLIK may at its option:
- 7.3.1 procure the right for you to continue to use the Software affected;
- 7.3.2 change or replace all or any part of the Software; or
- 7.3.3 terminate this Agreement immediately on written notice in respect of the affected Software.
- 7.4 Clauses 7.2 and 7.3 state the entire liability of RIGHT QLIK to you in respect of any a claim as contemplated by clause 7.2.

## 8. WARRANTIES

- 8.1 RIGHT QLIK warrants that:
- 8.1.1 for a period of 60 days from the Go-Live Date, the Software will function in all material respects with the electronic user documentation and the media on which the Software is provided will be free from defects in workmanship and materials when properly used in accordance with this Agreement; and
- 8.1.2 it has tested for viruses in the Software using commercially available virus checking software, consistent with current industry practice.
- 8.2 If during the warranty period RIGHT QLIK receives written notice from you of any breach of the warranties given in clause 8.1, together with any information as may be reasonably necessary to assist RIGHT QLIK in resolving the breach, then RIGHT QLIK shall at its own expense and within a reasonable time (i) remedy the breach in question by repair or replacing the Software or any part; or (ii) advise

how to achieve substantially the same functionality as described in the electronic user documentation through a different procedure from that set out in the electronic user documentation; or (iii) refund the licence fee paid for the relevant Software product or module provided you delete and return all copies of the Software.

- 8.3 The warranties in clause 8.1 shall not apply if the Software:
- 8.3.1 has been altered by any person other than RIGHT QLIK;
- 8.3.2 is used in combination with any software or materials not supplied or approved by RIGHT QLIK; or
- 8.3.3 is not used in accordance with the accompanying electronic user documentation; or
- 8.3.4 is used in a manner for which it was not intended or other than as permitted by this Agreement; or
- 8.3.5 is a Third Party Product.
- 8.4 RIGHT QLIK further represents and warrants that:
- 8.4.1 it possesses the full power and authority to enter into and perform its obligations under this Agreement;
- 8.4.2 it has obtained consent from third parties as are required for it to fulfil its obligations under this Agreement;
- 8.4.3 it shall provide the Services in accordance with generally accepted industry standards;
- 8.4.4 it shall take reasonable measures to ensure that all Services provided to you under this Agreement comply with all applicable laws and regulations in England.
- 8.5 You acknowledge that:
- 8.5.1 it is your own responsibility to ensure that the Software meets your requirements and that RIGHT QLIK does not warrant that it shall be suitable for your requirements;
- 8.5.2 Software in general is not error free and that the existence of such errors in the Software shall not by themselves constitute a breach of this Agreement.
- 8.6 You represent and warrant that you possess the full power and authority to enter into and perform your obligations under this Agreement.
- 8.7 Clauses 8.1 and 8.4 constitute the only warranties given by RIGHT QLIK in respect of the Services and Software. Express terms of this Agreement are in lieu of all warranties, conditions, terms, undertakings and obligations implied by statute, common law, custom, trade usage, course of dealing or otherwise, all of which are excluded to the fullest extent permitted by law.

## 9. FEES AND PAYMENT

- 9.1 In consideration of RIGHT QLIK providing the Services and Software you will pay RIGHT QLIK the Fees and invoices shall be raised accordingly.
- 9.2 All Fees in this Agreement are exclusive of VAT and expenses. VAT will be payable in addition to the Fees at the rates for the time being prescribed by law. Expenses are chargeable in accordance with RIGHT QLIK's standard policy.
- 9.3 You will pay the Fees, VAT and any expenses within 30 days of RIGHT QLIK's invoice unless agreed otherwise in the Schedule. If any invoice (or part of an invoice) is disputed you will notify RIGHT QLIK in writing within 14 days of the date of invoice giving reasons for such dispute and evidence of your claim. Any remaining undisputed amounts shall remain due and payable.
- 9.4 If the number of days shown in the Schedule varies for any reason RIGHT QLIK will notify you and invoice you at its standard daily rate (price list) for any additional days worked. If the number of days worked is less no charge will be made.
- 9.5 Once the Services have been completed any additional services shall be provided at list price unless otherwise agreed.
- 9.6 If any sum payable under this Agreement is not paid when due then without prejudice to RIGHT QLIK's other rights such sum will accrue interest from the due date until payment in

- full at 4% per annum Barclays Bank plc base rate from time to time both before and after judgment.
- 9.7 The Support Services Fee will be notified to you at least 60 days before the due date for that Year. You are deemed to accept the new Support Services Fee unless you exercise your right to terminate under clause 11.1.
- 9.8 RIGHT QLIK may suspend provision of the Services and Software on notice to you if you have not paid the applicable Fees when due. RIGHT QLIK shall have no Liability for damages sustained by you resulting from such suspension pursuant to this clause. RIGHT QLIK may charge you an administration charge on resumption.
- 9.9 If you request to defer or cancel the Services every effort will be made by RIGHT QLIK to redeploy such staff but in the event the days cannot be re-assigned RIGHT QLIK may charge you for these. The rates chargeable for cancellation or deferment where there is: (i) less than 48 hours notice is 100% per day; (ii) less than 7 days notice is 75% per day; and (iii) more than 7 days notice is 50% per day; together with any expenses already incurred or non-refundable e.g. train or air fares.
- 9.10 Any costs incurred by RIGHT QLIK as a result of you cancelling or deferring the Software or Services under this Agreement e.g. Hardware or any Software charges, will be invoiced to you on receipt of your notice or 2 months from the Start Date whichever is the earlier. Where RIGHT QLIK is able without liability to cancel such orders for Hardware and/or any Software it will do so.
- 10. LIMITATION OF LIABILITY**
- 10.1 The following provisions of this clause 10 set out the total Liability of RIGHT QLIK in respect of any breach of its obligations arising under or in connection with this Agreement whether in contract, tort (including negligence), restitution or otherwise.
- 10.2 Nothing in this Agreement particularly this clause 10, shall limit or exclude either party's Liability for fraud, or for death or personal injury resulting from negligence or to the extent such limitation or exclusion is unlawful.
- 10.3 RIGHT QLIK's total Liability in respect of loss of or damage to tangible property shall not in any circumstances exceed £1,000,000 in any Year.
- 10.4 Subject to clauses 10.3 and 10.5 and other than in respect of clause 7.2 RIGHT QLIK's total Liability in respect of any other loss or damage arising in any Year shall not in any circumstances exceed 100% of the Fees payable or paid by you under this Agreement in a Year or £1,000 whichever is the higher, less any money paid by RIGHT QLIK to a third party in respect of Third Party Products or Hardware. This clause 10.4 does not affect or limit RIGHT QLIK's Liability under clause 10.2.
- 10.5 RIGHT QLIK will have no liability under or in connection with this Agreement in respect of:
- 10.5.1 loss of profits, loss of business, loss of revenue, loss of contract, loss of goodwill, loss of anticipated earnings or savings (whether any of the foregoing are direct, indirect or consequential loss or damage); or
- 10.5.2 loss of use or value of any data or equipment including software, wasted management, operation or other time (whether any of the foregoing are direct, indirect or consequential); or
- 10.5.3 any indirect or consequential loss or damage; or
- 10.5.4 the poor performance, or lack of connectivity, or lack of availability of the Internet or telecommunications or hardware; however arising.
- 10.6 Notwithstanding clause 3.2.4 RIGHT QLIK shall have no Liability or obligations to your outsource provider.
- 10.7 The Fees have been set by RIGHT QLIK on the basis of the exclusions and restrictions of Liability in this clause 10 and would be higher without those provisions. In the

circumstances, you agree that those provisions are reasonable and will accept the risk and/or insure accordingly.

## 11. TERMINATION

- 11.1 Either party may terminate this whole Agreement by giving 60 days written notice to the other after the Go-Live Date. Any Fees paid in advance shall not be refunded. If Support Services are terminated under RIGHT QLIK's Support Terms & Conditions this Agreement will continue.
- 11.2 Either party may terminate this Agreement immediately upon written notice to the other if the other:
- 11.2.1 is in material breach of this Agreement and fails to remedy such breach within 30 days of notice being served by the other party;
- 11.2.2 becomes the subject of a petition in bankruptcy, whether voluntary or involuntary, which if involuntary is not dismissed within 60 days, or becomes insolvent, or ceases to do business in the normal course or any other similar situation arises; or
- 11.2.3 suffers for a period of 30 consecutive days or more a force majeure event described in clause 14.4.
- 11.3 RIGHT QLIK shall have the right to terminate this Agreement immediately if you are in (i) breach of clause 3 or clause 14.3; or (ii) have not paid for 60 days or more any Fees due under this Agreement.
- 11.4 The clauses in this Agreement which expressly or impliedly have effect after termination shall continue to be enforceable after termination.
- 11.5 Any termination of this Agreement shall be without prejudice to the accrued rights and remedies of the parties.

## 12. CONSEQUENCES OF TERMINATION

- 12.1 Even on termination of this Agreement, you shall be obliged to pay any accrued but unpaid Fees due including any under clauses 9.9 – 9.10.
- 12.2 You shall cease use of the licences granted under clause 3.1 and return all copies of (and delete from your systems) the Software to RIGHT QLIK.
- 12.3 You shall return or destroy all the Confidential Information of RIGHT QLIK's on termination. In the case of destruction, you shall certify such destruction to RIGHT QLIK within 14 days following request for such certification.

## 13. CONFIDENTIAL INFORMATION

- 13.1 "Confidential Information" means all information of a confidential or proprietary nature (including information imparted orally) relating to this Agreement, RIGHT QLIK's products and services including the Software and related IPR, all processes, potential or actual customers, or suppliers, business revealed to or learnt by either party at any time.
- Both parties shall:
- 13.1.1 keep the Confidential Information secret;
- 13.1.2 only disclose the Confidential Information to any of its employees on a need to know basis and shall ensure that such employee keeps the Confidential Information secret;
- 13.1.3 use the Confidential Information only in connection with this Agreement; and
- 13.1.4 not copy the Confidential Information without the prior written consent of the other.
- 13.2 If either party becomes aware of a breach of this clause it shall promptly notify the other and give all reasonable assistance in dealing with such breach.
- 13.3 The Customer agrees that RIGHT QLIK may refer to the Customer as a client and as a user of the Software and Services in marketing material.

#### 14. GENERAL

- 14.1 The parties to this Agreement do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it save that RIGHT QLIK may enforce the Software licence terms that affect RIGHT QLIK products.
- 14.2 Except as expressly provided for in this Agreement nothing in this Agreement shall be construed as creating a partnership or joint venture of any kind between the parties. Neither party shall have the authority or power to bind the other party.
- 14.3 This licence is personal to you. You shall not assign, sublicense or otherwise transfer this Agreement or any of its rights or obligations whether in whole or in part without the prior written consent of RIGHT QLIK. Transfer in this context includes any change in control or ownership (whether an asset or share sale). RIGHT QLIK's consent may be conditional upon you paying an assignment fee. RIGHT QLIK may assign this Agreement within its group of companies without consent.
- 14.4 Neither party will be liable to the other for any failure or delay or for the consequences of any failure or delay in performance of this Agreement, excluding your obligation to pay the Fees, if it is due to a force majeure event: any event beyond the reasonable control of a party to this Agreement including, without limitation, acts of God, war, industrial disputes, protests, fire, flood, storm, tempest, explosion, an act of terrorism and national emergencies. The party subject to such event shall, as soon as practicable, give notice of the event to the other party, such notice to include a reasonable forecast of the duration of the force majeure event. If such delay or failure continues for at least 30 days, either party shall be entitled to terminate this Agreement in accordance with clause 11.2.3.
- 14.5 No failure of either party to enforce its rights under this Agreement at any time for any period shall be construed as a waiver of such rights.
- 14.6 If any provision in this Agreement is found or held to be invalid or unenforceable, then the meaning of such provision shall be construed, to the extent feasible, so as to render the provision enforceable, and if no feasible interpretation would save such provision, it shall be severed from the remainder of this Agreement which shall remain in full force and effect. However, if the severed provision is essential and material to the rights or benefits received by either party, the parties shall use their best efforts to negotiate, in good faith, a substitute, valid and enforceable provision or agreement which most nearly effects their intent in entering into this Agreement.
- 14.7 This Agreement constitutes and contains the entire agreement of the parties and supersedes any and all prior agreements (including any Evaluation Licence and/or any previous software licence agreement as applicable) negotiations, correspondence, representations (except fraudulent representations), understandings and communications between the parties, whether written or oral, respecting the subject matter.
- 14.8 All notices that are required to be given under this Agreement shall be in writing and shall be sent to the registered address of the party, by first class pre-paid letter or fax transmission and shall be deemed to have been received:
- 14.8.1 by first class post, 48 hours after the date of mailing;
- 14.8.2 by fax, immediately upon transmission.
- 14.9 No addition to, or modification of, any provision in this Agreement shall be binding on either party unless made in writing or signed by duly authorised representatives of both parties.
- 14.10 All disputes arising out of or under this Agreement that are not resolved by the business contacts (the Customer contact and RIGHT QLIK's sales contact shown in the Schedule) shall be escalated internally by both parties for resolution. Second level escalation is to the business contact's managers and then third level is to that manager's manager. If the parties fail to settle the dispute within 30 days of the third level escalation, the dispute may be referred to the English courts.
- 14.11 This Agreement shall be governed by and construed in accordance with the laws of England and Wales and the parties irrevocably submit to the exclusive jurisdiction of the English Courts.

## DEFINITIONS USED IN THIS AGREEMENT

In these terms and conditions, unless the context otherwise requires, the following words have the following meanings:

ACT	means the Data Protection Act 1998 and any future legislation enacted in replacement or amendment of the Act including equivalent legislation in the Republic of Ireland (ROI).
Agreement	means the terms and conditions of this Software Licence and Services Agreement, together with the Schedule, PID and any other documents specifically referred to and referenced in as applicable including any amendments.
Customer	means the company shown in the Schedule and includes all references to you / your.
Fees	means any or all of the charges payable under this Agreement by you to RIGHT QLIK as shown in the Schedule and as notified by RIGHT QLIK to you from time to time and pursuant to clause 9.
Go-Live Date	means the sooner of RIGHT QLIK completing the professional services or installing the Software at the Main Location this may be prior to roll-out.
Hardware	means the third party hardware, if any, as listed in the Schedule to be supplied to you by RIGHT QLIK in accordance with this Agreement and the RIGHT QLIK Hardware Terms & Conditions.
IPR	means all intellectual and industrial property rights including copyright, patents, know-how, registered trademarks, registered designs, applications for and rights to apply for any of the foregoing, unregistered design rights, unregistered trademarks, database rights, and any other rights in any invention, discovery or process.
Liability	means liability in or for: breach of contract, negligence (as defined in Section 1(1) Unfair Contract Terms Act 1977), misrepresentation (excluding fraudulent misrepresentation), tortious claim (including breach of statutory duty), restitution or any other cause of action whatsoever relating to or arising under or in connection with this Agreement (including performance or non-performance), and including liability expressly provided for under this Agreement or arising by reason of the invalidity or unenforceability of any terms of this Agreement.
Main Location	means the delivery address as shown on the Schedule (which may be the same as the Registered Office address).
Project Initiation Document/PID	means the document produced by RIGHT QLIK (as referenced in the Schedule) setting out the scope of Services to be provided under this Agreement.
Schedule	means the schedule appended to this Agreement and which forms part of this Agreement.
Server License	means a licence for each server or application server. A licence is required for each server the Software is installed on (may only be installed at the Main Location). The authorised number of Server Licences is the number paid for by Customer and licensed by RIGHT QLIK as shown in the Schedule.
Services	means the services including Support Services to be provided to you under this Agreement as shown in the Schedule.
Software	means RIGHT QLIK's proprietary software, third party software licensed to RIGHT QLIK and Third Party Products as shown in the Schedule together with any modifications and/or enhancements developed or written by RIGHT QLIK as part of the Services.
Start Date	means the date shown in the Schedule
Support Services	means the Support Services which may be provided to you under this Agreement, as described in the RIGHT QLIK Support Terms & Conditions
Third Party Products	means software products from third party licensors which RIGHT QLIK procures on Customer's behalf. RIGHT QLIK passes through the software product to Customer, who has a direct contract including software licence with the third party licensor.
User	means each individual person (end user) using and/or accessing the Software. The numbers will be calculated on a concurrent basis. The authorised number of Users is the number paid for by Customer and licensed by RIGHT QLIK or third party licensor as application, as referred to in the Schedule. Any staff of an outsource provider under clause 3.2.4 shall count towards the number of users.